

No. 15051

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In the United States Court of Appeals  
for the Ninth Circuit

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NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

SWIFT & COMPANY, RESPONDENT

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ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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**BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD**

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**JURISDICTION**

This case is before the Court upon petition of the National Labor Relations Board, pursuant to Section 10(e) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 151, *et seq.*),<sup>1</sup> for enforcement of its order (R. 31-34) issued on November 10, 1955, against Swift & Company. The Board's decision and order are reported at 114 NLRB No. 146 (R. 23-34). This Court has jurisdiction of the proceeding, the unfair labor practice having occurred at Swift's plant located in South San Francisco, Cali-

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<sup>1</sup> The pertinent statutory provisions are printed in the Appendix, *infra*, pp. 18-22.

fornia, where Swift is engaged in slaughtering, handling and dressing livestock, and in selling meat and related products which it ships in interstate commerce (R. 25-26; 14-15, 36).<sup>2</sup>

STATEMENT OF THE CASE

I

**The Board's Findings of Fact**

Respondent admittedly refused to bargain with the Union,<sup>3</sup> certified by the Board as the exclusive bargaining representative of respondent's plant clerks and standards checkers, after a majority of these employees selected the Union pursuant to representation proceedings under Section 9 of the Act (R. 24, 26-27, 3-13, 16-23). In defense of its refusal, respondent contended before the Board that a unit composed of plant clerks and standards checkers was not appropriate for the purposes of collective bargaining because these employees are closely related to management, as supervisors, management representatives, or as confidential employees, and therefore are not entitled to engage in collective bargaining under the Act even in a unit composed solely of such employees (R. 24, 27-28; 8-9, n. 1). The pertinent facts respecting this defense, rejected by the Board, may be summarized as follows:

The meat packing plant of the Company, located in South San Francisco, California, has approximately

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<sup>2</sup> Where in a series of references a semicolon appears, record references preceding the semicolon are to the Board's findings; succeeding references are to the supporting evidence.

<sup>3</sup> Local 508, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL.

750 employees (R. 41). The plant consists of about 30 departments, each supervised by a foreman, who, in turn, is responsible to the Plant Superintendent in charge of the operation of the entire plant (R. 39-42, 45-46, 55-56, 65). Different labor organizations represent the electricians, drivers, boiler and engine room employees; the Union involved in this case represents the production employees (R. 37-39). In the representation proceedings with which we are here concerned the Union sought certification as the representative of the 12 plant clerks and 5 standards checkers, who were not represented by any other organization (R. 24, 26-27; 5, 8, 11, 41-42, 50).

#### A. *The plant clerks*

Unlike the clerical employees working in the Plant Superintendent's office and in the Commercial Office, located in buildings apart from the plant, the 12 plant clerks work in the 12 offices located inside the plant (R. 8, 28; 41-42, 53-54, 56-58, 65-66). In the performance of their clerical duties, the plant clerks are immediately supervised by the respective foremen to whose departments they are assigned (R. 8, 28; 45, 46). Some of the plant clerks work for a number of foremen, although most of the clerks remain in one office where they perform their duties occupying a desk adjacent to, or jointly with, the foreman whose office they share (R. 45-46, 79).

The primary duties of the plant clerks concern the maintenance of a variety of records for their respective departments relating to production, shipment, and costs. On the stock record books the clerks enter the quantity and location of the product being cured and



date the product is cured (R. 8; 42, 73). They prepare departmental records and reports concerning volume of production, supply, inventory, cost data, transfer of products in and out of the department, volume of shipment, and the number of hours worked by the employees (R. 8; 42-44, 81-82, 86-89). In addition, using the cost information supplied by the general business office, the Superintendent's office, and the Chief Engineer, the plant clerks fill out the weekly cost reports for their respective departments which show, among other things, the cost of the supplies, labor costs, steam and power costs, cost of repairs, and overhead costs, including sales data (R. 8; 42, 87-87). Finally, the clerks prepare the employees' vacation slips, which are sent to the timekeeper for the computation of vacation pay (R. 44, 64, 81-82).

Aside from these purely clerical tasks, the plant clerks weigh the products, manipulating the scale from inside the plant office, after the products are placed on the scale by the production employees (R. 80). They instruct the employees where to place, and when to move, certain products in the course of the processing (R. 8; 43, 80-81, 99). In the brief absences of the foreman, the plant clerks, as do some of the production employees, assume responsibility in the department for short intervals (R. 8; 47, 82). However, the plant clerks have no power to hire, discharge, assign or rate employees, or even make effective recommendations concerning the employees to the foreman (R. 8-9, 28; 100-101). And although the clerks may compile data for use by their respective foremen in the handling of employee grievances when so instructed by the foremen, the grievances are resolved by the foreman and the ag-



grieved employee without the presence of the plant clerk (R. 8, 9, 28; 48-49, 101).

The plant clerks are paid weekly salaries, are given work clothes, and share a locker room with the foreman (R. 47, 48, 83). They, like the production workers, punch the time clock of the department (R. 82-83), and, like the other salaried employees, the plant clerks enjoy the same type of health and welfare benefits enjoyed by the production employees (R. 48, 76-78). Neither plant clerks nor standards checkers can normally expect to be promoted to foreman, as there is no fixed line of promotion and production workers are frequently promoted to these supervisory positions (R. 104). Both plant clerks and standard checkers receive less pay than certain production workers and have on occasion been transferred from salaried positions to work as production employees (R. 101-102, 103-104).

### B. *The standards checkers*

The 5 standards checkers employed at the plant are closely allied to the plant clerks by the similarity of their duties and their working conditions. Like the plant clerks, the standards checkers perform clerical work in the plant offices under the immediate supervision of the foremen, are furnished work clothes, and are assigned locker room space apart from the hourly paid employees (R. 9; 53-54, 58, 64-65). Similarly, the standards checkers are salaried, rather than hourly-paid employees, report for work by punching a time-clock, and enjoy the identical vacation, health and other welfare benefits to which the plant clerks are entitled (R. 54, 64, 74-77). Although the standards checkers work closely with the foremen, they may work in more than one plant office, exercise no supervisory

duties, and have been transferred to production work (R. 9, 28; 66, 79).

The job of the standards checkers concerns the computation of incentive earnings of the production employees (R. 9; 49-50). The standards checkers are furnished standards books which contain the variable factors, predetermined by time and motion studies, respecting the various jobs of the different departments (R. 9; 49-50, 62-63). Each day, in consultation with the foreman and the plant clerk, the standards checkers ascertain the amount produced the previous day, whether any abnormal factors affected the previous day's production and how many hours each employee worked on operations subject to standards (R. 9; 49-51, 52, 66-67, 72-74, 92-98). The checker then enters this information upon the standards checking sheets supplied by the Superintendent's office for the various jobs, together with the variable factors which the standards checker determines are applicable (R. 9; 49-52, 58-61, 67). After all the production data is entered, the standards checker hands the standards checking sheet to the comptometer operators for computation of the employees' standard hours on premium or incentive pay (R. 9; 50, 68-69). After the sheet is examined by the foreman for accuracy, the standards checker takes the sheet directly to the head standards checker or his assistant (R. 50, 58, 69-72, 78-79).

A day or so after the work is performed, the incentive earnings of the employees are computed and posted in the plant (R. 52, 63-64). In case an employee questions the accuracy of the computation or the appropriateness of the standards selected by the standards checker, the standards checking sheet is returned to the plant department for reexamination by the standards checker, or is reviewed by the head standards checker and the

foreman (R. 9; 52-53, 95, 102-103). The standards checker does not otherwise participate in the grievance procedure (R. 9; 102-103).

## II

### The Board's Decision and Order

Upon the foregoing facts the Board held that "All plant clerks and standards checkers at the \* \* \* plant, excluding all other employees, guards, and supervisors defined in the Act" constituted a unit appropriate for the purposes of collective bargaining (R. 8, 12, 16-18, 26-27). In so holding, the Board rejected the Company's contentions that the plant clerks and standards checkers were supervisors, or closely related to management as managerial representatives or confidential employees, and thus ineligible to participate in collective bargaining negotiations (R. 9, 28).

Pursuant to the Board's direction, an election was held among the 16 eligible employees; the Union received 11 of the votes, and was certified on March 28, 1955 (R. 7-12). Nevertheless, the Company, on and after April 27, 1955, rejected the Union's request to enter into bargaining negotiations, alleging that the unit found by the Board was inappropriate (R. 24, 27-28; 18-23). The Board, holding that the Company's admitted refusal to bargain violated Section 8 (a) (5) and (1) of the Act, ordered the Company to cease and desist from refusing to bargain collectively with the Union, or in any like manner interfering with the efforts of the Union to bargain collectively on behalf of the employees (R. 28-31). Affirmatively, the order requires the Company, upon request, to bargain collectively with the Union and to post appropriate notices (R. 31-34).

## ARGUMENT

**The Bargaining Unit of Plant Clerks and Standards Checkers  
Was an Appropriate Unit**

Respondent having admittedly refused to bargain with the Union certified by the Board, the first question before this Court is whether the Board has acted arbitrarily or capriciously in determining that the plant clerks and standards checkers constitute an appropriate bargaining unit. *Foreman & Clark, Inc. v. N.L.R.B.*, 215 F. 2d 396, 405-406 (C.A. 9), certiorari denied, 348 U. S. 887, and cases there cited. We submit that the undisputed facts, summarized above, establish that the plant clerks and standards checkers are so closely allied, by virtue of their duties and working conditions, as to constitute a cohesive unit appropriate for the purposes of collective bargaining under the Act. See *N.L.R.B. v. Armour & Co.*, 154 F. 2d 570, 575, 576 (C.A. 10), certiorari denied, 329 U. S. 732, quoted with approval in *Foreman & Clark, supra*; see also *N.L.R.B. v. Swift & Co.*, 162 F. 2d 575, 580-581 (C.A. 3), certiorari denied, 332 U. S. 791; *N.L.R.B. v. Continental Oil Co.*, 179 F. 2d 552, 554-555 (C.A. 10). Indeed, throughout this proceeding, the similarity of the employees' interests and conditions of employment are repeatedly stressed (R. 48, 50-54, 58, 72-77, 82, 101-104).

The Company's chief attack upon the Board's determination, however, is that the plant clerks and standards checkers are disqualified from representation by any labor organization for the purposes of engaging in collective bargaining because of the supervisory, managerial, or confidential nature of their responsibilities as employees of the Company.<sup>4</sup>

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<sup>4</sup> Respondent also contended before the Board that the Union could not represent the plant clerks and standards checkers be-



Similar contentions have been previously examined and found wanting in *N.L.R.B. v. Armour & Co.*, 154 F. 2d 570 (C.A. 10), certiorari denied, 329 U. S. 732, a case which we submit is indistinguishable from the case at bar, and in *N.L.R.B. v. Swift & Co.*, 162 F. 2d 575 (C.A. 3), certiorari denied, 332 U. S. 791, a case involving another plant of the respondent herein.<sup>5</sup>

In *N.L.R.B. v. Armour & Co.*, *supra*, as here, the employer—who was engaged in the same type of large-scale meat processing and packing—contended that plant clerks and checkers were part of management and therefore not entitled to representation for collec-

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cause the Union also represented the Company's production employees. In support of this contention, respondent adverted merely to the fact that such employees, in the South San Francisco plant and in the Company's other plants, have never been considered as part of a unit composed of production employees. The short answer, of course, is that the Board's certification does not place the clerks and checkers in the production unit for purposes of collective bargaining, but establishes a separate unit for them (*supra*, p. 7). In any event, similar contentions have been raised in virtually identical situations and have been rejected by the courts. *N.L.R.B. v. Swift & Co.*, 162 F. 2d 575, 580-581 (C.A. 3), certiorari denied, 332 U.S. 791; *N.L.R.B. v. Armour & Co.*, 154 F. 2d 570, 572, 575 (C.A. 10), certiorari denied, 329 U.S. 732.

<sup>5</sup> Although these cases arose under the original Act, nothing in the 1947 amendments detracts from the force of their reasoning, which is fully explained below (pp. 14-17). Even with respect to respondent's contentions that the clerks and checkers are supervisors as defined in Section 2 (11) of the Act, a provision not contained in the original Act, the reasoning of these cases is relevant. For, in approving a definition of "supervisor," Congress intended to reach "the supervisor vested with such genuine management prerogatives as the right to hire or fire, discipline, or make effective recommendations with respect to such action" and "adopted the test which the Board itself has made" S. Rept. No. 105, 80th Cong., 1st Sess., p. 4; H. Conf. Rept. No. 510, 80th Cong., 1st Sess., p. 35 (Legislative History of the Labor Management Relations Act, 1947 (Govt. Print. off. 1948), hereinafter cited as "Leg. Hist.," Vol. I, pp. 410, 539).

tive bargaining purposes under the Act. 154 F. 2d at 572, 574, 576-577. The duties of the plant clerks employed by Armour were broader than those of the clerks employed by the Company in the instant case, for Armour's clerks had the responsibility of directing test runs of a group of employees where no regular foreman was present, of maintaining employment records of the workers, and of notifying the foreman which employees were to be laid off or hired under the seniority rules. *Id.* at 573. Similarly the checkers in Armour had greater authority than the Company's checkers, since the former examined the plant clerks' reports for errors, made spot checks of the performance of the various operations, both as to method and the number of men employed, and even advised the foreman of deviations from job descriptions or standards and the time allowances for a day's work. *Id.* at 576-577. Nevertheless, the court there sustained the Board's finding that both these groups of workers were employees entitled to full protection of the Act, and that Armour was compelled to bargain with their chosen representative. Similarly, the court in *N.L.R.B. v. Swift & Co.*, 162 F. 2d at 577, 580-581, held that the plant clerks and standards checkers were not supervisors, and that the Board could properly include them in a unit with other clerks, even though a coaffiliate of their union represented the production employees.

In the light of these judicial precedents, we turn now to a more particularized consideration of the Company's contentions concerning the validity of the Board's determination respecting these two groups of employees.

A. *The plant clerks and standards checkers are not supervisors within the meaning of Section 2 (11) of the Act*

Although respondent urged before the Board that the standards checkers were given supervisory duties, at the hearing in the representation proceeding the plant superintendent conceded that he "could not define any of [the standards checkers'] functions as being supervisory" (R. 102). Even apart from this admission respondent's assertion that these employees have supervisory responsibilities is unsupported by the record.

Respondent urged that because the duties of the standards checkers affect the compensation earned by the employees, they have the authority to "reward" the employees within the meaning of Section 2 (11) of the Act, quoted *infra*, pp. 18-19. Respondent's argument not only involves a distortion in the plain meaning of the word "reward,"<sup>6</sup> but would make supervisors of every employee whose functions might affect the compensation of other employees. The legislative history of Section 2 (11) conclusively demonstrates that Congress did not intend to exclude from the benefits of the Act all persons whose duties affected the earnings

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<sup>6</sup> Particularly applicable here is the familiar canon of statutory construction that "legislation, when not expressed in technical terms is addressed to the common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has a right to rely on ordinary words addressed to him." *Addison v. Holly Hill Fruit Co.*, 322 U.S. 607, 618; *N.L.R.B. v. Coca-Cola Bottling Co.*, 350 U.S. 264, 268-269; *Helvering v. Hutchings*, 312 U.S. 393, 396. See also *N.L.R.B. v. North Carolina Granite Corp.*, 201 F. 2d 469, 470 (C.A. 4), where the court held that an employee who kept the time of himself and two other employees, thus affecting their compensation, did not have authority to "reward" these employees so as to make him a supervisor within the meaning of the Act.



of other employees. Under the House bill, it was proposed to exclude, as supervisors, "personnel who fix the amount of wages earned by other employees, such as inspectors, checkers, weigh-masters, and time-study personnel." H. Conf. Rept. No. 510, 80th Cong., 1st Sess., p. 35; Section 2 (12) (A) of H.R. 3020; 93 Cong. Rec. 4138, 6442. (Leg. Hist., Vol. I, pp. 40-41, 539, Vol. II, pp. 1068, 1537). In conference, however, the House version was rejected, and the conferees decided to restrict the term "supervisor" to individuals "generally regarded as foremen and persons of like or higher rank" as in the Senate version. *Ibid.*

In any event, the undisputed evidence previously summarized (pp. 5-7), establishes that the checkers' duties do not involve, as Section 2 (11) of the Act requires, the exercise of "independent judgment" but were, merely of a "routine or clerical nature." Thus, their very functions relate to the computation of the production employees' earnings by selecting the factors which are enumerated in the standards book. Before selecting the factors to be entered on the checking sheet, however, the standards checker consults with the foreman and the plant clerk, and, again, before transmitting the sheet to the standards department, the sheet is examined by the foreman for accuracy. Even after transmission, the standards checking sheet is subject to review by the head standards checker or his assistant, as a matter of routine, and, if an employee questions the computation of his pay, the standards checking sheet will be reviewed once more. In short, a standards checker is, at most, "a trusted employee with intelligence enough to gather information for the management's action" but lacking any authority to "exercise any judgment as to policy or to hire or fire, demote, or

promote any employee." *N.L.R.B. v. Osbrink*, 218 F. 2d 341, 344 (C.A. 9), certiorari denied, 349 U. S. 928. See also *N.L.R.B. v. Parma Water Lifter Co.*, 211 F. 2d 258, 261 (C.A. 9), certiorari denied, 348 U. S. 829.

The duties of the plant clerks, too, are essentially those of a "trusted employee with intelligence enough to gather information for the management's action" but without authority to exercise judgment as to policy or employment. Respondent, however, relied upon the fact that the plant clerks instruct the production employees with respect to the handling of products in the course of processing, supervise the department in the absence of the foreman, and may discuss the qualification of production employees with the foremen. At most, we submit, respondent's argument establishes that the plant clerks possess "minor supervisory duties" but "were not intended to be excluded from the coverage of the Act." *N.L.R.B. v. Quincy Steel Casting Co.*, 200 F. 2d 293, 296 (C.A. 1). See also *N.L.R.B. v. North Carolina Granite Corp.*, 201 F. 2d 369 (C.A. 4); Sen. Rept. No. 105, 80th Cong., 1st Sess., pp. 4, 19; 93 Cong. Rec. 3836, 4677-4678 (I Leg. Hist. 410, 425; II Leg. Hist. 1009, 1303).

Thus, although the plant clerk may give his opinion to the foreman with respect to a particular employee, the plant superintendent testified that "The foreman makes the decisions, that is his job" even though, of course, the foreman "might value" the opinion of the plant clerk (R. 100, 101). This falls far short of the requisite power of a supervisor to "effectively recommend" action with respect to an employee. Similarly, although the plant clerk exercises the supervisory powers of the foreman during the foreman's temporary absence, for short periods, "the grant of power to ex-

ercise a supervisory function only spasmodically and infrequently" cannot make a " 'supervisor' out of a rank and file employee." *N.L.R.B. v. Leland-Gifford Co.*, 200 F. 2d 620, 625 (C.A. 1); see also *N.L.R.B. v. Quincy Steel Casting Co.*, 200 F. 2d 293, 296 (C.A. 1); *N.L.R.B. v. Whitin Machine Works*, 204 F. 2d 883 (C.A. 1). Especially is this true where, as here, production employees also relieve the supervisors (R. 82). And, finally, the instructions given the production employees regarding the handling of products in the course of processing were merely routine directions similar to those given by the molder in *N.L.R.B. v. Quincy Steel Casting Co.*, 200 F. 2d 293, 296 (C.A. 1), by the clerk in *N.L.R.B. v. Whitin Machine Works*, 204 F. 2d 883, 886 (C.A. 1), and by the carpenter in *N.L.R.B. v. North Carolina Granite Corp*, 201 F. 2d 469, 470 (C.A. 4), all of whom were held to be employees, not "supervisors," within the meaning of the Act.

*B. The plant clerks and standards checkers have no duties as confidential employees or representatives of management in the field of labor relations*

In addition to the contention that the plant clerks and standards checkers exercise supervisory duties within the meaning of Section 2 (11) of the Act, respondent argued that these employees are so closely integrated with management as to be confidential employees and managerial representatives who, under Board established policies, should be excluded from the benefits of collective bargaining. In this connection respondent adverted to the fact that the employees have access to financial and production data, employment records, and information concerning employee grievances.

At the outset, it is clear that respondent's position does not mean that the cost, production, or other data, available to the plant clerks and standards checkers is not available to the other employees, but only that the Company did not want this information disclosed to competitors. Thus, at the hearing, although testifying that the Company wanted the records restricted to supervisory personnel, the plant superintendent admitted that the cost records are not kept in a vault, and explained, finally, "I stated that we would certainly not want our competitors to know our costs or our production data. To me that is the meaning of confidential" (R. 84, 90, 91-92). Moreover, the plant superintendent testified that "any employee" has the "right" to ask what the standards are on any job to which he is assigned; that the rates of pay for production workers are "available for all employees" (R. 84); that the employees' earnings are posted in the plant (R. 52); and that time-study data are made available to union representatives, for the purposes of collective bargaining (R. 84-85).

From management's own view, therefore, whatever confidential aspects are involved in the duties of plant clerks and standards checkers relate not to the personnel problems of the Company, but to the harmful effects of disclosure to business competitors. Such duties do not disqualify these employees from the right to engage in collective bargaining, as was recognized in *N.L.R.B. v. Armour & Co.*, 154 F. 2d 570, 574 (C.A. 10), certiorari denied, 329 U. S. 732, where the court stated in rejecting the same contention urged by respondent's competitor with respect to the employees performing the same work as those here:



Certainly, exclusion from the benefits of the Act is not the price of honest and faithful service. It is true that the knowledge which the plant clerks obtain is of a highly confidential nature and that its disclosure to competitors of Armour might result in injury to Armour. Armour may require, as a condition of employment, that the plant clerks treat such information as confidential.

See also *Associated Press v. N.L.R.B.*, 301 U. S. 103, 132; *B. F. Goodrich Co.* 115 NLRB No. 103 (37 LRRM 1383).<sup>7</sup>

These same considerations demonstrate that the faithful performance of these employees' duties in connection with the computation of earnings or in connection with the adjustment of grievances is in no way incompatible with their being represented by a collective bargaining agent. As already noted (*supra*, pp. 4-5, 7), neither the plant clerks nor the standards checkers actually participate in the conference, which

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<sup>7</sup> Contrary to respondent's contention before the Board, there is nothing in the Board's decision in *Ohio Ferro Alloys Corporation*, 107 NLRB 504, requiring a different conclusion. In that case, the two individuals the Board excluded from the bargaining unit as "confidential employees" did clerical and stenographic work for the plant superintendent in charge of labor relations, including handling correspondence between the superintendent and officers of the corporation. *Ibid.* The Board thus concluded that it was "clear on the record that these two individuals in the course of their regular duties actively handled confidential materials relating to labor relations." *Id.* at 505. In the case at bar, however, the plant clerks and standards checkers have no comparable duties with respect to labor relations, and have no access to any confidential matters, even in connection with grievances, which concern labor relations decisions. See *Seventeenth Annual Report of the National Labor Relations Board* (Govt. Print. Off., 1953) pp. 91-92; *Sixteenth Annual Report* (Govt. Print. Off., 1952) pp. 117-119.

is normally handled directly between the foreman and the aggrieved employee. The role played by these employees is the quite closely restricted one of gathering information, or rechecking computations, for use by the foreman in adjusting the grievance. Should these employees fail to perform these duties properly, or should the plant checker neglect to select the proper standards in computing incentive earnings of the other employees, the Company has the effective remedy of disciplining or discharging these employees. Exclusion from the benefits of the Act is neither required nor justified. See the *Armour*, *Associated Press*, and *Goodrich* cases cited immediately above.

#### CONCLUSION

It is respectfully submitted that the Board properly concluded that none of respondent's grounds for refusing to honor the Board's certification of the Union as the bargaining agent of the plant clerks and standards checkers had merit and that a decree should issue enforcing the Board's order in full.

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JUNE, 1956.

## APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 151 *et seq.*), are as follows:

## DEFINITIONS

Sec. 2. When used in this Act—

\* \* \* \* \*

(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, \* \* \*, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual have the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

\* \* \* \* \*

(11) The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a



merely routine or clerical nature, but requires the use of independent judgment.

\* \* \* \* \*

### RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also, have the right to refrain from any or all of such activities \* \* \*.

### UNFAIR LABOR PRACTICES

Sec. 8. (a) It shall be an unfair labor practice for an employer—(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7; \* \* \*

\* \* \* \* \*

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

\* \* \* \* \*

### REPRESENTATIVES AND ELECTIONS

Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of

employment, or other conditions of employment: \* \* \*

(b) The Board shall decide in each case whether in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: \* \* \*

\* \* \* \* \*

(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or an individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in Section 9 (a), \* \* \*

\* \* \* \* \*

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

\* \* \* \* \*

(d) Whenever an order of the Board made pursuant to Section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under Section 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

#### PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise.  
\* \* \*

(c) \* \* \* If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act \* \* \*

(e) The Board shall have power to petition any circuit court of appeals of the United States (including

the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive.

\* \* \*